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No. 235

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

LUNIE LATTIMER,

Appellant,

vs.

AMERICAN PLAN CORPORATION AND CRYSTAL CLEAR, INC.,

Appellees.

On Appeal from Supreme Court of Ohio

JURISDICTIONAL STATEMENT

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Supreme Court of the United States

APRIL TERM, 1967

No. ——

DUNIE DATTIMER,

Petitioner,

vs.

AMERICAN PLAN CORPORATION AND CRYSTAL CLEAR, INC.,

Respondents.

STATEMENT OF THE CASE

During the latter part of September of 1962 a corporation was formed in Columbus, Ohio under the name of The Crystal Clear, Inc. and it had as its principal purpose and occupation the selling of water softeners and a gentleman by the name of Larry Fannin appeared to be the president of said corporation. Within a few days thereafter Mr. Fannin called upon a Mr. Charles Spielberger, who was the president of an organization known as "American Plan Inc.", which organization was a recent successor of another finance company known as Colonial Finance Company which Colonial Finance Company, for reasons unknown to petitioner, had recently gone out of business and was taken over by the American Plan Corporation. During the early part of October of 1962, the exact date neither one of said presidents were able to determine, Mr. Larry Fannin met with Mr. Spielberger in the office

of the American Plan Corporation and discussed plans of selling and financing the proposed water softeners, which were to be handled by the Crystal Clear Corporation and financed by the American Plan Corporation. Said meeting by the presidents of said corporations resulted in a clear understanding between the two organizations as to the method and processes to be used in the consummation of the proposed and future sales on the part of the Crystal Clear Corporation and to that extent the American Plan Corporation was to and did furnish to the Crystal Clear Corporation the necessary notes, papers, security agreements, etc. to be used by the Crystal Clear Corporation in securing responsible signers upon said notes, security agreement and other papers to complete their combined effort.

Another feature of said conference and agreement between the two corporations was to the effect that whenever one of the salesmen or any of the salesmen of the Crystal Clear Corporation would secure the signature of an individual upon the notes and papers furnished by the American Plan Corporation, said agent was to call in by telephone the names and address of said person, and by the way they never solicited the signature of any person who did not own real estate, and upon the said call or recommendation by said agent alone the American Plan Corporation began to set up its books in the name of said person so signing, all without contacting the supposed signer to ascertain whether or not he or she understood the signature and what the transaction really was or whether or not they were seeking or desired to open an account and to have credit extended to them, and said signer did not know and in no case were they able to know that they were signing papers to purchase a water softener.

The American Plan Corporation denied and contended that they did not know the process used by the Crystal Clear Corporation in obtaining the signatures on the notes and papers furnished by said American Plan Corporation to the Crystal Clear Corporation but, the fact that the American Plan Corporation furnished the papers to be signed and had agreed to accept the papers and the signatures upon a telephone call as well as agreeing upon a certain financing charge, insurance charge, all of which was added to the papers after the securing of the signatures by the Crystal Clear Corporation clearly charges them with cooperating and conspiring with the Crystal Clear Corporation to get their own notes back with gilt-edge security.

It is in the evidence that the agents of the Crystal Clear Corporation would call upon the prospective signers from 7:00 to 9:00 o'clock in the evening with various papers and warranties and promises and at no time offering to sell to these parties a water softener, but to solicit from them to have them to send letters which were prepared by the Crystal Clear Corporation to friends or their indicating that they had discovered a new and valuable process or product and introducing to them one of the agents of the Crystal Clear Corporation who would call upon them within a certain time and suggesting to them that they give them ear and stating to them that one of those softeners had been installed in their home and was very satisfactory and suggested that their friends would listen to the agent and take one or buy one. It is also in the evidence that at no time did the agent for the Crystal Clear Corporation inform the parties that he was attempting to sell them a water softener. They even gave false information to some of the parties which induced them to sign the papers,

of the friends to whom they had sent one of these self prepared letters by the Crystal Clear Corporation should purchase one of the water softeners that this person would receive $50.00 for each one of their friends who purchased and thereupon they promised that the lady of the house could sit at home and earn money for herself by being an agent or an assistant to the Crystal Clear Corporation.

It is also in the evidence that on some occasions the agent for the Crystal Clear Corporation obtained the signature of a free holder at 8:00 o'clock in the evening and by 9:00 or 9:30 o'clock in the same evening the American Plan Corporation had approved the transaction and had extended to the Crystal Clear Corporation the acceptance of the assignment of said note. It is also in the evidence that at the time the papers, furnished by the American Plan Corporation to the Crystal Clear Corporation, was signed by the petitioner there were no figures of any kind on said paper to indicate a purchase price or sale or finance charge or insurance charge or any figure whatever and said paper was taken by the agent with him upon the promise that he would return a copy of same the next day when they would install into the home of this signor one of the water softeners which was to be used as a demonstrator to the signers friends. Upon the next day when the water softener was delivered and installed then a copy of this instrument which was furnished by the American Plan Corporation, was delivered to the petitioner and which also contained typed figures as to sale price, finance charges, insurance charges, all of which was new and unknown to the signor who signed the paper before and who did not realize that these figures existed for same was made in his absence when they received a letter from the American Plan Corporation setting out their indebtedness to said corporation in the approximate sums varying from Eight to Nine

Hundred Dollars ($200.00 to $300.00). There is evidence that the average water softener had a sale price of less than Three Hundred ($300.00) Dollars.

This process continued in the City of Columbus for approximately a month and a half until the Better Business Bureau in and for Columbus, Ohio started its investigation and the Crystal Clear Corporation and the American Plan Corporation continued such operation until the early part of February 1963 when the State authorities compelled the dissolution of the Crystal Clear Corporation.

HISTORY

In the early part of 1964 several of the persons who were victims of the aforesaid plan started proceedings to declare null and void and set aside the alleged agency agreements; the alleged promissory notes and alleged chattel mortgages on the ground that they were obtained through a scheme on the part of the American Plan Corporation and the Crystal Clear Corporation to cheat and defraud them and upon the grounds of misrepresentation and fraud in obtaining their signatures and seven of said cases, in which the facts and circumstances were similar were consolidated in the Common Pleas Court of Franklin County, Ohio, this petitioner being one of the consolidators and to said petitions answers were filed by the American Plan Corporation and the Crystal Clear Corporation through its attorney, although said Crystal Clear Corporation was no more in existence, and the American Plan Corporation filed a cross-petition asking for judgments upon said notes and mortgages whereupon the Court of Common Pleas dismissed the petition of the petitioners and sustained the cross-petition of the American Plan Corporation and rendered judgments against each of the seven

parties so consolidated in various sums ranging from Eight to Nine Hundred ($800.00 to $900.00) Dollars each.

So consolidated these cases were appealed to the Court of Appeals in and for Franklin County, Ohio and tried as one case since the facts and circumstances were very similar and practically the same. The Court of Appeals affirmed the judgment of the Common Pleas Court as to the rendering judgment against each of said petitioners and reversed the Common Pleas Court as against the cross-petition of the defendant, the American Plan Corporation for alleged violation of the statute in obtaining the judgments. Whereupon, so consolidated the seven petitioners moved to the Supreme Court of the State of Ohio requesting that it require the Court of Appeals in and for Franklin County, Ohio to certify its records to said tribunal and said tribunal denied said motion and rendered no opinion as to the reason for its actions. A motion for rehearing of same was duly filed and the Supreme Court overruled said motion. In due time notice of appeal was filed in the Supreme Court of Ohio by one of the petitioners on behalf of all to this honorable tribunal.

QUESTIONS PRESENTED

1. May the Common Pleas Court of Franklin County, Ohio; the Court of Appeals in and for Franklin County, Ohio and the Supreme Court of the State of Ohio fail to give full faith and credit to the judgments of the Supreme Court of other States of the union wherein the identical questions of law were adjudicated, contrary to Article 4, Section 1 of the Constitution of the United States?

2. May the Supreme Court of Ohio fail to require the Court of Appeals in and for Franklin County, Ohio to certify its records to it when a judgment rendered by said Court is contradictory within its self?

3. Can a financing company, who confers with and joins in with the scheme of a newly formed corporation to obtain the signatures of free holders on security agreements which have encroached in it somewhere, promissory notes furnished by said finance corporation, claim to be holders in due course when said signatures were obtained by false and misrepresented statements of the one to whom said finance corporation had furnished the security papers, under the guise of being a holder in due course of legitimate business?

CONSTITUTIONAL PROVISION

Article 4, Section I of the Constitution of the United States provides as follows:

> Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.

CITATIONS TO OPINIONS BELOW

The trial Court, namely, The Common Pleas Court in and for Franklin County, Ohio, rendered no opinion but entered the judgment entry in each of the seven cases on trial before said tribunal including the one at bar, which is printed in Appendix A hereto, page 10. The opinion of the Court of Appeals in and for Franklin County, Ohio is printed here in Appendix B at page 12 and the Entry following said opinion is printed here as Appendix C at page 24. The journal entries of the Supreme Court of Ohio overruling the petitioners' motion directing the Court of Appeals in and for Franklin County, Ohio to certify its records and denying rehearing are unreported and are printed in Appendix D at page 26.

REASONS FOR GRANTING THE APPEAL

This is more or less a novel question to be presented to this honorable tribunal, mainly for the reason that the victims of these quick sales and quick financing of more or less worthless trinkets and articles are persons of poor or more or less moderate circumstances and unable to fight back when they have been induced to sign papers thinking that they were becoming agents to sell to their friends the particular articles, for which they were to receive a certain percent per sale as compensation.

In the case of the *Credit Company v. Childs* reported in 128 A.L.R. at page 726, the Supreme Court of the State of Kansas laid down the following rule:

> "A finance company which had prepared and delivered to an automobile dealer, forms of notes and conditional sales contracts, bearing a printed form of assignment to itself and which on the day of the sale of the car, by the dealer, took an assignment of the sales contract and purchases note, it is to be regarded as a party to the transaction against whom the defense of fraud and misrepresentation may be made, rather than as an innocent purchaser for value before maturity."

Under similar facts the Court of Appeals in and for Stark County, Ohio in the Case of *Davis v. Commercial Credit Corporation* reported in 34 N.E.2d at page 710 said court held as follows:

> "In an action by the maker of the note who had paid same, against the contractor and the finance company to recover the amount paid, on the ground of conspiracy between the contractor and the company to defraud, upon adequate proof of such ground a verdict and judgment on behalf of the property owner will be sustained."

The Court of Appeals in and for Franklin County, Ohio has announced a policy which runs contra to the decisions

of the above named authorities and holds, in spite of the almost identical circumstance and facts, that the American Plan Corporation was a holder in due course and was not in any way a party to the deceit or fraud or misrepresentation on the part of the Crystal Clear Corporation. Then, in an about face opinion, said Court of Appeals in and for Franklin County, Ohio, contending that the American Plan Corporation failed to show that it had complied fully with the uniform commercial act, which compliance was absolutely necessary in order to place the American Plan Corporation in the field of being a holder in due course without notice.

CONCLUSION

For the foregoing reasons we feel and respectfully request that this appeal should be granted.

Respectfully submitted,
L. P. Henderson,
265½ S. High Street,
Columbus, Ohio 43215,
Attorney for Petitioner.

CERTIFICATION

The undersigned hereby certifies that he is duly admitted to practice before this Court and that he has personally served a copy of the Notice of Appeal and the Brief in support of same upon Robert Preston, 50 South Third Street, Columbus, Ohio and John E. Palcich, 10 E. Town Street, Columbus, Ohio, Attorneys for Respondents.

L. P. Henderson,
Attorney for Petitioner.

APPENDIX A

IN THE COURT OF COMMON PLEAS,
FRANKLIN COUNTY, OHIO

No. 217023

LUNIE LATTIMER,
Plaintiff,

vs.

AMERICAN PLAN CORPORATION AND
CRYSTAL CLEAR, INC.,
Defendants.

ENTRY

This cause came on for trial by the Court, the parties having waived a jury, and, on consideration of the evidence by and on behalf of the plaintiff, and upon motion to dismiss plaintiff's petition by defendants, American Plan Corporation and Crystal Clear, Inc., made at the conclusion of plaintiff's case, the Court finds said motion to be well taken and sustains same.

The Court further finds that upon consideration of the evidence offered the defendant, American Plan Corporation, is entitled to recover judgment against the plaintiff, Lunie Lattimer on its cross-petition in the amount of $864.00.

IT IS THEREFORE ORDERED that the petition of the plaintiff against Crystal Clear, Inc., and American Plan Corporation be and the same is hereby dismissed, with prejudice. Cost to plaintiff.

IT IS FURTHER ORDERED that the defendant, American Plan Corporation, recover a judgment against the plaintiff, Lunie Lattimer in the amount of $864.00 plus interest and costs.

MARSHALL, *Judge.*

APPROVED:

L. P. HENDERSON,
Attorney for Plaintiffs,

JOHN E. PALCICH,
Attorney for Defendant, Crystal Clear, Inc.

ROBINS, METCALF & PRESTON
Attorneys for Defendant, American Plan Corporation.

APPENDIX B

No. 8257

ANNABELLE RAPP,

Plaintiff-Appellant,

vs.

CRYSTAL CLEAR, INC.,
AMERICAN PLAN CORPORATION,
and
THE COLONIAL FINANCE CO.,

Defendants-Appellees.

DECISION

of Court of Appeals of Franklin County, Ohio
Rendered on July 12, 1966

BRYANT, P. J.

Seven appeals on questions of law will be dealt with at this time. Seven separate suits were filed in the Franklin County Common Pleas Court. In all of them, the defendants were the same and while there were different plaintiffs in each, in general the allegations of all of the petitions were similar as was the relief sought. Also, in each case, one or more of the defendants entered general denials and one of the three corporate defendants filed separate cross-petitions in each case seeking judgment against the plaintiff or plaintiffs in that case on a purchase money promissory note and chattel mortgage. Crystal Clear, Inc., and American Plan Corporation, in each case, there had been a solicitation and sale of a household appliance described as a water softener or "water conditioner" for a cash price of $649.00

each in six cases plus finance charges and an insurance premium of $215.00, total $954.00, payable in monthly payments of $24.00 over a 39-month period. The other case was similar except that the selling or cash price (it was latest in point of time) was $50.00 higher or $992.00 plus finance charges and an insurance premium of $226.50, total $925.50, payable in monthly installments of $26.00 for 35 months and a final installment of $15.50.

In the court below, the seven cases were consolidated for hearing. The various petitions and amended petitions which were filed in all but one basically alleged fraud and collusion of the three corporate defendants in an alleged conspiracy to cheat the plaintiffs, it being alleged that instead of being represented as such, the plaintiffs were made to think that they would get the water softeners at no cost by commissions they would earn under a referral plan and that plaintiffs in signing the various papers thought they were being hired to work for the corporation which was selling the appliances.

As already stated, there were three corporate defendants in each case. One of these, Crystal Clear, Inc., an Ohio corporation, was engaged in selling the appliances at retail. It was organized in the late summer or early fall of 1962, and appears to have been dissolved about one year later. The transactions complained of by the various plaintiffs took place between December 22, 1962, and March 20, 1963.

The other two defendants also were Ohio corporations, The Colonial Finance Company and the corporation which purchased it, The American Plan Corporation.

In each of the seven cases, agents or representatives of Crystal Clear, Inc., visited the homes of the plaintiffs, exhibited a small model of the water softener, extolled its virtues and the saving in soap and detergents which it would effect, and obtained the signature or signatures of

the plaintiff or plaintiffs in these cases to promissory notes and chattel mortgages.

The documents signed were offered and admitted in evidence at the hearing as Mutual Exhibits Nos. 1 through 7. They are in dimensions 8½" x 11", the usual size of business letterheads, printed on both sides. The paper and printed forms completed but without names, amounts or specific details were prepared and furnished by The American Plan Corporation, hereinafter called American, to Crystal Clear, Inc.

All of them were filled out at the time of signing with the names of the various plaintiffs, the name of Crystal Clear, Inc., the cash price, finance charges, total or time balance, the number of monthly installments and the amount of each, and other details by agents or salesmen of Crystal Clear, Inc. All of them without exception admittedly were signed by the one or both of plaintiffs in the suits in the court below.

As we have indicated, the petitions alleged fraud and misrepresentation by Crystal Clear, Inc., alleged that American was either aware of such fraud or under the circumstances should have been aware of the fraud practiced, and hence prayed that the court order the surrender and cancellation of the notes and chattel mortgages identified as Mutual Exhibits Nos. 1 through 7.

Crystal Clear, Inc., at first was not served in any of the cases then at issue but attempt was soon had in five of them. It did not deny making the sales referred to. Under this plan, as an inducement to get a purchaser to sign the note and other documents, there was an agreement offered by which the purchaser would be entitled to a commission of $50.00 for each additional sale to others which resulted from the referral or recommendation of the plaintiffs. American denied knowledge of any alleged fraud or

sharp practice by Crystal Clear, Inc., alleged that the collateral promissory notes had been assigned to Americus for a valuable consideration before default, that said instrument also contained a chattel mortgage or security agreement, Americus also filed separate cross-petitions in each case alleging that all of the plaintiffs had defaulted on their respective promissory notes, and asking the court for judgment on the notes, foreclosure of the chattel mortgages and orders for the sale of the trailers.

On this state of the record, the seven consolidated petitions and cross-petitions came on for the jury trial in the court below. The case numbers in that court and in the Columbiana Pleas Court and the names of the plaintiffs and amounts for which judgment was taken are as follows:

Our number 8230 (C.P. 217,687) Virgil Rushin and Hannah Rushin—$798.20.

Our number 8231 (C.P. 217,797) Earl Reamer and Maxine L. Reamer—$848.60.

Our number 8233 (C.P. 217,464) Ulysses W. McSeveral and Juanita Scarver—$818.40.

Our number 8234 (C.P. 217,445) John Bartlett and Evelistine Bartlett—$840.00.

Our number 8235 (C.P. 217,446) William E. Jones and Beatrice Jones—$864.00.

Our number 8236 (C.P. 217,423) Lonnie Dettmer—$864.00.

Our number 8237 (C.P. 217,028) Annabelle Rapp—$814.00.

At the time of the consolidated hearing, counsel for plaintiffs below, expressly waived the right to a jury trial on the cross-petitions. They called [illegible] of the twelve plaintiffs in the [illegible] whose called for [illegible] office [illegible] of Americus that the [illegible]

president of Crystal Clear, Inc. The other two witnesses were Mrs. Mamie Reames, one of the plaintiffs in No. 8231, and Mrs. Bernice Jones, one of the plaintiffs in No. 8235. None of the other ten plaintiffs was called with the exception of a brief questioning of William E. Jones, who was then excused. A stipulation (R. 143) was agreed to that as to the other plaintiffs "that their testimony would be substantially the same as that which has been testified to by the plaintiffs who have been on the stand."

After the plaintiffs rested, counsel for American called only one witness, Charles Spielberger, their local manager, who identified ledger cards kept by American as to each of the seven accounts (Deft. American Exhibits B through H) showing the "time balances," the credits or payments made by the plaintiffs and the final balances for which judgment was asked in each cross-petition. With this testimony and the introduction of the ledger cards as exhibits, counsel for American rested, making motions for dismissal of the seven amended petitions of plaintiffs and for judgment on the seven cross-petitions.

The court below sustained both the motions to dismiss the petitions of the plaintiffs in each case and rendered judgment in favor of American for the amounts prayed for in the cross-petitions. It is from the foregoing judgments that separate appeals on questions of law have been filed in each case. A single bill of exceptions was made applicable in each of the appeals and the briefs and assignments of error are similar in the several cases.

Plaintiffs-appellants in this court assign five errors with respect to the judgments of the court below, the substance of which are: (1) such judgments are contrary to the weight of the evidence; (2) error in determining that under the circumstances, American was a bona fide holder of each of the promissory notes and that American obtained them

in due course of the law; (3) rendering judgment in favor of American and against the plaintiffs for the amounts claimed in the cross-petitions; (4) the judgments are contrary to law, and (5) other errors apparent on the face of the record.

Although the second attempts to serve summons upon Crystal Clear, Inc., were successful only in five of the cases, it would appear that this corporation entered its appearance in all seven cases when (R. 150) it joined with counsel for American in a motion in each of the seven cases seeking to dismiss all of the petitions.

The trial court, in sustaining the motions to dismiss, set forth its reasons in the record (R. 151-158) holding that plaintiffs had failed to prove that there was collusion between Crystal Clear, Inc., and American, and also that plaintiffs had failed to prove that Crystal Clear, Inc., committed fraud in connection with the various sales efforts.

In our opinion, the decision of the court below in sustaining the motions to dismiss the amended petitions of the plaintiffs in the seven cases for failure of proof did not constitute prejudicial error. Only two of the twelve plaintiffs personally testified and the stipulation that the testimony of the others would be similar added but little to the case. We conclude, therefore, that so far as applicable to the dismissal of the amended petitions, the errors assigned are not well taken and must be overruled.

There remain the errors assigned by the plaintiffs-appellants with reference to the judgments entered against them on the cross-petitions of American.

It is indisputable on the record that American purchased the notes with the security agreements. Accordingly, American had notice that the consideration involved retail installment sales. Therefore, the cross-petitions on the notes are subject to any defense arising under R. C.

Chapter 1317 (Uniform Retail Installment Sales) which is ascertainable, or to which American was placed on reasonable inquiry, by the face of the instruments. Obviously too, R. C. Chapter 1317 applies to defendants-appellees' second cause of action for foreclosure of the security agreements.

One of the first questions confronting us has to do with whether or not there was a violation of the provisions of R. C. Chapter 1317 with reference to charges for credit life insurance on the lives of the purchasers to the extent of the balance outstanding.

R. C. Section 1317.04 provides in part as follows:

"The written instrument evidencing a retail installment sale and required by section 1317.02 of the Revised Code shall recite the following:

"• • •

"(C) The unpaid balance of the cash price payable by the retail buyer to the retail seller • • •

"(D) The cost to the retail buyer of any insurance the retail buyer has agreed to procure, if the retail seller has agreed to purchase the insurance and extend credit to the retail buyer for the price thereof.

"(E) The principal balance owed on the retail installment contract which is the sum total of divisions (C) and (D).

"(F) The amount of the finance charge.

"(G) The time balance or indebtedness owed by the retail buyer to the retail seller and the number of installment payments required and the amount and date of each payment necessary finally to pay the time balance which is the sum total of divisions (E) and (F).

"Divisions (D) and (F) may be added together and stated as one sum in the written instrument and if so stated division (E) may be omitted, but in such event the retail seller or his successor in interest shall, within twenty-five days after the making of the retail installment contract, deliver personally, send by mail, or cause to be sent by mail, to the retail buyer at his address as shown on the retail installment contract, a statement reciting the separate amounts of divisions

(D), (E), and (F). Division (F) may be stated as a rate, if said rate does not exceed eight per cent per annum straight interest, in which event the time balance provided in division (G) need not be stated."

Several questions arise in this connection. Referring to Mutual Exhibit No. 5 (Scarver), we note that it specifically provides that there shall be credit life insurance which "the retail seller has agreed to purchase and extend credit to the purchaser for the price thereof." (Mutual Exhibit No. 5.) Referring to the same retail installment sales contract, we note that there is no compliance with the provisions of division (D) of R. C. Section 1317.04, but instead, under the terms of sale Item 7 reads as follows:

"FINANCE CHARGE AND INSURANCE IF INDICATED—$215.00."

We also note that R. C. Section 1317.04 authorizes the combining in one figure of the cost of insurance and the amount of finance charge, but that in such event the retail seller or his successor in interest shall within twenty-five days furnish the retail buyer a statement reciting separate amounts charged for insurance cash purchase price and the total thereof.

We further note that in R. C. Section 1317.05 in such cases it is made the duty of the retail seller to furnish the buyer with either a policy of insurance or a certificate of insurance with the further provision that if this is not done the retail buyer is not liable until it is done or a refund made. R. C. Section 1317.05 provides in part as follows:

"Any retail seller who, in any retail installment contract, has agreed to purchase insurance for the retail buyer and to extend credit for the price thereof, shall, prior to the due date of the first installment of the retail installment contract, deliver to the retail buyer personally, or mail or cause to be mailed to him at his address as shown on the retail installment con-

tract, the policy of insurance, or in lieu thereof a certificate of insurance, or the retail buyer is not liable on his retail installment contract until the policy, or certificate of insurance, is received, or full refund is made of the insurance premium."

We have searched the record with care and are unable to find what effect if any was given to the above provisions by the court below. As we have indicated, Mutual Exhibit No. 5 is the note, chattel mortgage and financing statement signed by Ulysses W. M. and Jnanita Searver, plaintiffs in Case No. 8233. We also note that American Exhibit H relates to said case and parties and clearly shows that to the cash price of $649.00 there was added $19.45 for credit life insurance, making the principal balance $668.45, to which was added the total finance charge of $196.55 thus bringing the time balance to $864.00.

We also note that as to Mutual Exhibits Nos. 1, 2, 3, 4, 6, and 7, there is no check mark or specific indications with reference to credit life insurance, but an examination of American Exhibits B through G clearly shows that credit life insurance was charged for at the rate of $19.45 in each case with the exception of the Earl Reames case (No. 8281), in which the amount charged was $20.81. We also note that in none of the retail installment sales contracts (Mutual Exhibits Nos. 1 through 7, inc.) is there any separate statement as to the cost of insurance though it would seem from the breakdown on the ledger cards (Exhs. B through G) that insurance premiums were charged in every case. As heretofore stated, we are unable to find what effect if any was given to these provisions by the court below and feel this will require reversal of the cases and remand for a new trial to permit such determination [illegible]

[illegible] seems to us to be of great importance and [illegible] credits due and charges to be made where there is an acceleration

of the due date of the note. As has already been indicated, the promissory notes in these seven cases were signed in the period between December 22, 1962, and March 16, 1963. All of them were to run for 36 months and according to American Exhibits B through H had original maturity dates between February 7, 1966, and April 19, 1966. All of the promissory notes contain provisions for acceleration either in case of failure to pay any installment or in the event the secured party "may feel insecure."

As we see it, this gives rise to at least two separate and distinct questions, neither one of which appears to have been considered or determined by the court below. For one or both of these reasons (late payment of an installment or "feeling insecure"), American decided to take advantage of the acceleration clauses and in five of the cases filed cross-petitions seeking judgment against the plaintiffs as makers of the notes on May 20, 1964, and in the other two cases filed similar cross-petitions against the remaining plaintiffs for judgment on June 24, 1964. At that time none of the contracts had been in existence for 36 months. In two cases, the plaintiffs had made three monthly payments; and in two others, two monthly payments; in the fifth, one monthly payment; and in the remaining two, no monthly payments. Nevertheless, at the time of filing the cross-petitions, in Case No. 8230, nearly 21 of the 36 months had yet to run; in Case No. 8231, more than 22 months remained; in Case No. 8233, nearly 22 months remained; in Case No. 8234, more than 20 months remained; in Case No. 8235, almost 23 months remained; in Case No. 8236, approximately 29 months remained; and in Case No. 8237, approximately 26 months remained.

Nevertheless, in each cross-petition, judgment was asked for the full cash price of each appliance, and the full amount of the carrying charges for the entire 36 months' period. This was reduced only by the payments made.

Mr. Spielberger, after testifying as to the balance owing in the seven cases (R. 161), was interrogated with reference to other credits or payments made by the purchasers and stated that no other payments had been made. He stated that for the purpose of pay-off or advance payment of such accounts under the Metzenbaum law (R. C. Chapter 1317), the balances probably would be larger than those claimed by American. His testimony in this connection (R. 161-162 reads as follows:

"Q. To your knowledge, are any other credits due on the notes? A. No, sir.

"Q. There have been no payments other than those which would be reflected on that ledger card? A. That is right.

"Q. Mr. Spielberger, the balances which you just gave are the balances that are due as of today? A. No, sir, for the purposes of pay-off the balances would probably be larger than what they are listed here.

"Q. Will you explain that to the Court? A. Under the Metzenbaum law of rebate for the particular number of months that the contract has been in force would be subtracted from this balance. However, if you listed the late charges that are due on each monthly payment that are past due and late, the total late fees would exceed the rebate, therefore, making the pay-off balance actually larger than what it is listed here.

"Q. It is your testimony that the balance quoted to the Court is a smaller balance than that allowed under the Metzenbaum law of the State of Ohio? A. Yes, sir.

"Q. You have made that computation on those contracts? A. On several of them. I have one in particular I have listed it on.

"Q. That would be representative of all of them? A. Yes, sir."

As we view this testimony, it appears that Mr. Spielberger took into account a factor which he called rebate but for which he gave no specific figure, and another factor which he called late charges but for which he gave no

specific figure, testifying rather as to his opinion that one was greater than the other. That may have all been true, but neither this court nor the court below has any way of ascertaining it from this record. This, therefore, is another reason why the judgments must be reversed and the causes remanded for a determination as to the actual amount of rebate due in dollars less the actual amount of the late charges.

This is hardly the type of situation where opinion evidence is proper. The instruments here impose what we consider unconscionable costs upon the purchasers, and subject them to unnecessarily harsh terms. We do not believe this is typical of the loan industry. If it is, the General Assembly should investigate the field with a view to strengthening Chapter 1317 of the Revised Code.

For the reasons above set forth, the third, fourth and fifth assignments of error as they relate to the seven judgments entered upon the cross-petitions of American are well taken, must be sustained, and the judgments of the court below must be reversed.

Judgments reversed.

DUFFY and DUFFEY, JJ., concur.

APPENDIX C

IN THE COURT OF APPEALS OF FRANKLIN COUNTY, OHIO

No. 2231

EARL REAMES AND MAMIE L. REAMES,
Plaintiffs-Appellants,
vs.
CRYSTAL CLEAR, INC.,
AMERICAN PLAN CORPORATION,
and
THE COLONIAL FINANCE CO.,
Defendants-Appellees.

ENTRY

This cause came on for hearing upon the appeal on questions of law, assignments of error, bill of exceptions, the transcript, and the original paper and pleading from the Court of Common Pleas of Franklin County, Ohio, and was argued by counsel, on consideration whereof the Court finds there is no error apparent on the record in the lower court's dismissal of the amended petition of the plaintiff.

Upon further consideration whereof this Court finds that in the record and proceedings aforesaid there is error manifest upon the face of this record in the rendition of the judgment on the defendant, American Plan's, cross-petition, to-wit:

1. There is no indication in the record as to whether or not defendant, American Plan Corporation, complied with Revised Code 1317.04 and 1317.05 with reference to charges for credit life insurance on the lives of the purchasers.

2. The record below is insufficient to make a proper determination as to the actual amount of finance rebate due to the plaintiff in dollars, less the actual amount of any late charges.

It is, therefore, considered by the court that the judgment of the Court of Common Pleas, Franklin County, Ohio, in dismissing plaintiff's petition be, and the same is hereby affirmed.

It is therefore further considered, ordered and adjudged by this Court that the judgment of the Court of Common Pleas, Franklin County rendering judgment to American Plan Corporation on its cross-petition be and the same is hereby reversed and held for naught, and that the cause be remanded to the Court of Common Pleas, Franklin County, Ohio for further proceedings according to law, costs on this appeal to abide the final determination of the cause.

APPROVED:

L. P. HENDERSON,
Attorney for Plaintiff-Appellant,

JOHN E. PALCICH,
Attorney for Defendant-Appellee, Crystal Clear, Inc.,

ROBERT C. PRESTON,
Attorney for Defendant-Appellee,
American Plan Corporation.

APPENDIX D

THE SUPREME COURT OF
THE STATE OF OHIO

VIRGIL BUSHIN, et al.,
Plaintiffs-Appellants,

vs.

CRYSTAL CLEAR, INC., et al.,
Defendants-Appellees.

Nos. 40455 thru 40461

MOTIONS FOR AN ORDER DIRECTING
THE COURT OF APPEALS
FOR FRANKLIN COUNTY
TO CERTIFY ITS RECORDS

It is ordered by the Court that these motions are overruled.

COSTS:
Motion Fee, $140.00, paid by L. P. Henderson.
Duly certified.

APPENDIX E

THE SUPREME COURT OF THE STATE OF OHIO

VIRGIL & HAZEL RUSHIN, et al.,
Plaintiffs-Appellants,

vs.

CRYSTAL CLEAR, INC., et al.,
Defendants-Appellees.

Nos. 40455 thru 40461

REHEARING

It is ordered by the court that rehearing in these causes are denied.

Duly certified.